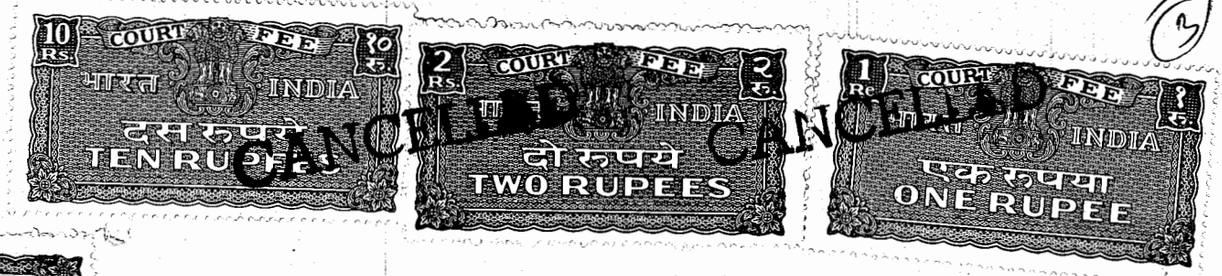
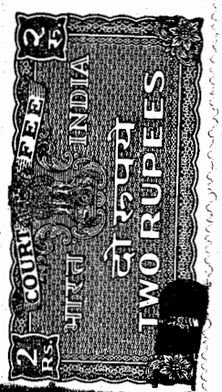



IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

C.R. 247 /2003 S.B.

Single Bench

(REVISION U/S 23E C.G. ACCOMMODATION CONTROL ACT. )

APPLICANT LANDLORD : Saheb lal Namdeo aged about 63 years S/o late Shri Kanhaiya Lal Namdeo, Retd. Govt. Servant Pensioner, R/o Bhagat Singh Chowk, Dongargarh, Tahsil Dongargarh, District Rajnandgaon (C.G.) Senior Citizen.

P.R. No. 1593/03
Presented by Shri Bhuvaneshwar Tiwari
dated 15.03.03

VERSUS

NON-APPLICANT/ TENENT L.R. OF ORIGINAL. NON-APPLICANT/TENENT. : Raju Shandilya S/o Late Shri Sondhulal Shandilya, aged about 45 years, R/o Bhagat Singh Chowk, Dongargarh, District Rajnandgaon (C.G.).

REVISION UNDER SECTION 23 E C.G. ACCOMMODATION CONTROL ACT AGAINST THE ORDER DATED 07-06-2003 PASSED IN CASE NO. 1/A/90(7) YEAR 96- 97 BY LEARNED RENT CONTROLLING AUTHORITY DONGARGARH DISTRICT RAJNANDGAON.

(46)

# HIGH COURT OF CHHATTISGARH AT BILASPUR

C.R. No. 247/2003

Applicant Saheb Lal Namdeo

**Versus**

Respondent Raju Shandilya

Post for 31/03/2005

Sd/-
Dhirendra Mishra
Judge

(47)

# HIGH COURT OF CHHATTISGARH AT BILASPUR

C.R. No. 247/2003

Applicant Saheb Lal Namdeo

**Versus**

Respondent Raju Shandilya

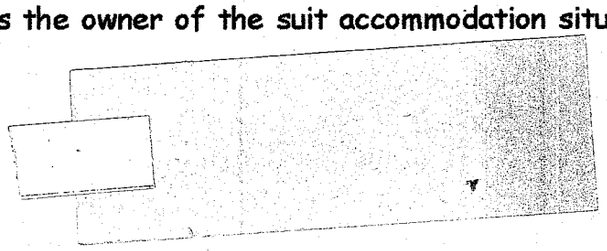
Shri Yashwant Tiwari counsel for the applicant.
Shri Prafull Bharat counsel for the respondent.

## O R D E R

(Passed on 31-3-2005)

This revision petition has been filed by the applicant under Section 23 (E) of the C.G. Accommodation Control Act (hereinafter referred to as Act for brevity) against the order dated 07/06/2003 passed by Rent Controlling Authority, Dongargarh in Case No. 01/A/90 (7) 1996-1997. By the said order, the application of the applicant filed for eviction of the non applicant under Section 23 (A) of the Act has been rejected.

2) Case of the applicant before the Court below was that the applicant was the owner of the suit accommodation situated in



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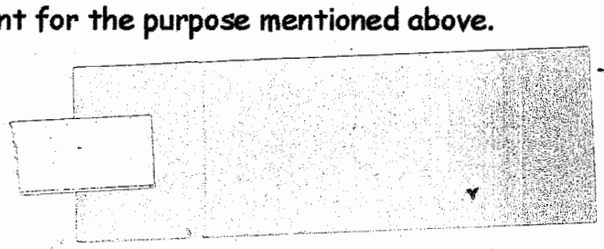
Bandhowa Chowk, Dongargarh which was purchased by him on 15/05/92 through a registered sale deed from its erstwhile owner namely Smt. Nirmala Tumane. The said accommodation was given on rent to the non applicant by Nirmala Tumane on monthly rent of Rs. 60/- for his residence and running the tailoring shop. Subsequently, the applicant informed the non applicant that the said accommodation was purchased by him and thus, he became the landlord of the same. Application for eviction was filed on the ground that the non applicant had not paid rent for the period from 15/05/92 to 31/07/96 despite notice and thus, he was entitled to recover rent of Rs. 2310/- for the period from 15/05/92 to 31/07/96 @ Rs. 60/- per month. The applicant also took the ground of bona fide need of the said accommodation for opening of the stationery shop and since the condition of the said accommodation had become dilapidated and the reconstruction of the same was not possible without obtaining the vacant possession thereof, the application for eviction was filed. The applicant was Assistant Accountant in District Court, Durg and he retired on 31/07/96.

3) The non applicant in his reply denied the ownership of the applicant for want of knowledge. It was submitted by him that he being an old and poor person was residing in the said house on monthly rent of Rs. 8/- for last 40 years and in 5' x 5' portion of the front verandah of the said house he was carrying on the business of tailoring. He further pleaded that the applicant is possessed of well furnished residential accommodation which could be used by him for non residential purpose also and this fact has been suppressed by him. The non

applicant further pleaded that he was never the tenant of the applicant. Non applicant has also pleaded that earlier he had contacted Nirmala Tumane to purchase the said accommodation and even after the payment of advance money towards the same said Nirmala Tumane resiled from her stand and in that connection he had preferred an objection to the Registrar. The non-applicant further pleaded that the application for eviction on the ground of non-payment of rent is not maintainable under the provisions of Section 23-A of the Act as the regular Civil Suit under Section 12 (1) A of the Act was maintainable and thus the Rent Controlling Authority had no jurisdiction to grant decree of eviction under Section 23 - A of the Act. According to the non-applicant the application for eviction was not maintainable also on the ground of bona fide need for non-residential purposes though the applicant has averred that vacant possession of the accommodation was required for its reconstruction which according to the applicant was not possible without obtaining its vacant possession. However, no documents have been filed to show that the permission was obtained from the concern Municipality nor the proposed map of the construction etc. have been submitted which shows that the application for eviction was filed by the applicant malafidely. It was further pleaded by the non-applicant that the applicant is possessed of a well furnished accommodation just adjacent to the disputed accommodation which is more than the requirement of the applicant and his family members and the front portion of which is lying vacant which can be used by the applicant for the purpose mentioned above.



4) Earlier the non-applicant had filed an application on 09-04-1997 for leave to defend which was subsequently rejected by the Rent Controlling Authority on 12-01-1998 and the non-applicant was directed to give vacant possession of the disputed accommodation within two months there-from. Against the order dated 12-01-1998 the Civil Revision No. 1436/98 was preferred by the original non-applicant which was allowed by the High Court of M.P. on 22-09-1999, the order dated 12-01-1998 was set aside and the matter was remanded back to the Rent Controlling Authority, Dongargarh with a direction to decide the same on merits in accordance with law after giving due opportunity of hearing to both the parties.

5) The non-applicant filed an application under Section 37 of the Act stating that roof of the said accommodation had become dilapidated and if the same is not repaired it may collapse any day and therefore he may be permitted to carry out necessary repair work in the said house. It was also stated by the non-applicant that as he could not deposit the rent as directed by the High Court, he may be permitted to get the repair work done from the amount of rent payable by him to the applicant and the account for repair work shall be furnished by him.

6) The landlord also moved an application under Section 23 (H) of the Act on 24-11-1999 stating that as the non-applicant had not deposited the rent his defence should be struck off. The Rent Controlling Authority by order dated 15-03-2000 directed the non-applicant to pay the rent to the applicant up to Feb. 2000

and to further submit the estimate of the expenditure incurred for repairs. Subsequently, estimate regarding expenditure of Rs. 3090/- was submitted by the non-applicant which was obtained by him from Chief Municipality Officer, Dongargarh. Thus the non-applicant was permitted to undertake the repair work. The Rent Controlling Authority held that only Rs. 360/- i.e. six months rent @ Rs. 60/- per month would be adjustable towards the rent payable by the non-applicant. During the pendency of the said application the original non-applicant Sondhu Lal died on 22-02-2001 and his legal heirs were brought on record. During the summary enquiry the applicant examined himself as A.W. 1 and previous owner of the said accommodation namely Nirmala Tumane as A.W.2 whereas non-applicant examined one Lalit Kumar as D.W.1 and Ashok as D.W. 2.

7) The Rent Controlling Authority dismissed the application of the applicant by recording a finding that contention of the applicant that he requires the said accommodation bonafidely for business purpose is contradicted by his own evidence by which it is evident that the suit accommodation is not suitable for business purpose as the applicant has a cemented house with slab (concrete) roof on the prominent square of Dongargarh town. The application has been rejected also on the ground that the applicant has only two daughters who are living in their respective houses after marriage and that the applicant is incapable of doing any business. The non-applicant further contended that the applicant is getting pension of Rs. 3100/- per month and this apart he is also getting interest from the deposits and the rent from the tenanted accommodation. He

further contended that the applicant is not even able to see properly and thus is incapable of doing any business. The Rent Controlling Authority also recorded a finding that there was no compulsion with the applicant to engage himself in any business and thus the bona fide requirement of the landlord / applicant has not been proved. The contention of the applicant that he is a disabled person and needs the accommodation bonafidely to run the business with the help of his grand son has also been rejected on the ground that there was no pleading to this effect. He further recorded a finding that since the applicant is in possession of the alternative reasonably suitable accommodation in Dongargarh town for the purpose of business and first floor of which has been let out and therefore his requirement for the said accommodation can not be held to the bona fide.

8) Learned counsel for the applicant submits that the manner in which the plea of bona fide requirement of the said accommodation taken by the applicant has been rejected is illegal. The finding of the Rent Controlling Authority that the applicant is receiving pension of Rs. 3100/- and that he is blind and as such cannot run the business without the help of others is absolutely arbitrary and against the provisions of law. He has further argued that the house in which the applicant is residing does not belong to the applicant which is evident from the suggestion put to the applicant (A.W.1) during cross examination by the tenant in reply to which he has stated that the house in which he is residing belongs to his daughter Madhuri and therefore he has not submitted the documents of

the same. The objection of the non-applicant that the applicant has not pleaded in the application for eviction that he does not have any reasonably suitable alternative accommodation in the town of Dongargarh and therefore the order of eviction can not be passed against the applicant as per the provisions of Section 23 (A)(b) of the Act because as per Section 23 (A)(b) of the Act the landlord is required to plead and prove that he is the owner of the accommodation let for non residential purpose and he requires it bonafidely for the purpose of continuing or starting the business or for major sons or unmarried daughters or that the landlord or such person has no other reasonably suitable non residential accommodation of his own in his occupation in the city or town concerned. However, in view of the suggestion put by the tenant as mentioned above and reply of the landlord to the said suggestion it is established that the tenant was aware of the fact that the house in which the applicant was residing belongs to his daughter Madhuri and therefore no prejudice would be caused to the tenant by not pleading in the application regarding non availability of the alternative suitable accommodation in the city of Dongergarh by the applicant and in the absence of such pleading claim of the applicant for eviction can not be thrown out. The finding of the Rent Controlling Authority that the applicant is having suitable alternative accommodation in Dongargarh town is not correct. Even if it is held that the landlord is having accommodation in the Dongargarh town, it was required to be proved by the tenant that the same is suitable in comparison to the suit premises. It is the choice of the land lord as to where he

wishes to start his business and which accommodation is suitable to him and the same can not be questioned by the tenant. In support of this contention learned counsel for the applicant places reliance in the judgment of Apex Court in the matter of **Dhannalal Vs. Kalavati Bai and others reported in AIR 2002 SC 2572** and in the matter of **Ashok Kumar Gupta Vs. Vijay Kumar Agrawal reported in AIR 2002 SC 1310.** It is further argued by the counsel for the applicant that from the order sheet dated 22.9.99 passed in CR No. 1436/1998 and order sheets dated 15.10.2001 and 15.3.2000 passed by the Rent Controlling Authroity it is clear that the tenant was in the habit of making a willful default in paying the rent and accordingly the defence is likely to be struck off under section 23-H read with section 13 of the Act. The further argument of the applicant is that merely by acceptance of the rent by the landlord tendered by the tenant, the default does not stand cured.

9) On the other hand learned counsel for the non applicant submits that the accommodation in question was let out for residential purposes whereas the applicant wants the said premises for non residential purposes and therefore the provisions of section 23-A (b) of the Act are not applicable in the case and the Rent Controlling Authority has rightly arrived at the conclusion that the applicant is possessed of well furnished alternative suitable accommodation which is more than his requirement and the front portion of which is lying vacant which could be used by the applicant for his business purposes. The other stand taken by the non applicant is that

under section 23-A (b) of the Act eviction of the tenant can be effected only on the following ground:

> That the accommodation let for non residential purposes is required bonafidely by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non residential accommodation of his own in his occupation in the city or town concerned.

However, by the present application the landlord is praying for eviction on the grounds enumerated in the aforesaid section. By the instant application the applicant has prayed for eviction as he needs the accommodation as he wants to start the stationery business from the said accommodation and for that he has to demolish the existing structure and reconstruct the same and thereafter to open the stationery shop therein. Rent Controlling Authority has no jurisdiction to entertain the application under section 23-A of the Act on this ground.

10) It is further argued by the counsel for the non applicant that the applicant has averred in his application that he wants to start his stationery business. However, there is no mention in

the application that the applicant will do the business with the help of his relatives or any other person. From the cross examination of the applicant it is clear that due to diminishing eye sight he is unable to run the stationery business and therefore claim of the applicant that he needs the accommodation bonafidely for his business purpose is not made out. The application was rightly dismissed by the Rent Controlling authority on the ground that there is no pleading in the application that the land lord has no other suitable alternative accommodation for his business purpose in the city or town of Dongargarh whereas the non applicant in his written statement has specifically pleaded that the applicant possesses reasonably suitable well furnished specious accommodation and the front portion of which is still lying vacant and the applicant can use the same for his business purposes. Even after the pleadings in the written statement, the applicant did not amend his application and has admitted in his cross examination that he is residing in the first block and has dismantled the roof and raised the cemented roof in the first block and in the third block the non applicant resides as tenant. Thus the applicant failed to establish that he has no other reasonably suitable alternative accommodation for his business in the Dongargarh town and therefore the landlord was not entitled to get the decree for eviction. Reliance has been placed in the judgment of the Supreme Court in the matter of **Hasmat Rai and another Vs. Raghunath Prasad reported in AIR 1981 SC 1711.** Learned counsel for the non applicant submits that for the aforesaid reasons the applicant has not been able to make out

the case of bona fide requirement and for these reasons the instant revision petition deserves to be dismissed.

11) I have heard learned counsel for the parties and perused the material available on record.

12) The application of the applicant has been dismissed by the Rent Controlling Authority on the following ground:

a. That, the need of the applicant can not be termed to be bona fide inasmuch as the applicant is incapable of doing any business because of his diminishing eye sight as he is not even able to do his house hold work without the help of others.

b. That, the applicant is earning Rs. 3,100/- from pension and apart from this he is also getting interest from the deposits and rent from the tenant and as such there is no compulsion on the part of the landlord to engage himself in any vocation.

c. That, the applicant is in possession of alternative suitable accommodation on a prominent square of Dongargarh town and as such the order of eviction against the non applicant can not be passed.

Thus, it is not in dispute that the applicant is a retired government servant and as such he comes within the category of section 23-J (i) of the Act. It has also emerged from the evidence of the respective parties that the applicant is almost blind and as such the case of the applicant is also covered under section 23-J (iv) of the Act which

gives the benefit to the physically handicapped persons. The contention of the non applicant that the landlord is praying for eviction on the ground that he requires the suit accommodation firstly for demolition and reconstruction as the said house is in dilapidated condition and the reconstruction can not be undertaken unless its vacant possession is obtained by him and secondly after reconstruction, he wants the same for the business of stationery shop, and thus the ground taken by the applicant does not fall within the purview of section 23 A (b) of the Act as the above ground is available to the applicant only under section 12 (1) (g) or (h) of the Act. However, the submission of the non applicant is not acceptable on this ground because once it is held that the applicant falls within any of the categories of section 23-J of the Act and the landlord raises the contention that he bonafidely requires the non residential accommodation, the application in the present form is maintainable. The only point which the Rent Controlling Authority had to satisfy is that the landlord is a person described under section 23-J of the Act and the accommodation in question is required by the landlord for his bona fide necessity under section 23 A(b) of the Act.

13) In the instant case, the landlord has come with the case that he requires the suit accommodation bonafidely for the purpose of opening the stationery shop which falls under section 23 (A) (b) of the Act and as such the application is maintainable.

14) The finding of the Rent Controlling Authority that the requirement of the landlord is not bona fide is based on the following assumptions :

(i) that the applicant is a physically handicapped person and there is no pleading in the application that he is doing the business with the help of the relatives and therefore the bona fide requirement for his business is not made out, cannot be accepted as while arriving at the conclusion this aspect of the matter has been completely ignored by the Rent Controlling Authority. It is for the landlord to do his business according to his own limitation and it was not appropriate on the part of the Rent Controlling Authority to ascertain the capability of the landlord on the basis of his physical handicappedness and come to the conclusion that he is incapable of doing any business because of his handicappedness and as such the bona fide requirement of the applicant of opening the stationery shop is not made out.

(ii) The other ground that the applicant is earning through other sources and therefore there is no compulsion on the part of the landlord to do any business after retirement and therefore the need is not bona fide, is also erroneous and unjustified because a person aged about 60 years after retirement cannot be denied the post retirement vocation if he so desires and his bona fide requirement of the non residential accommodation cannot be doubted on this ground. Thus, the above finding is erroneous and the same cannot be upheld.

(iii) The other ground that the applicant has alternative reasonably suitable accommodation in Dongargarh town and on the basis of which the application for eviction has been rejected has to be considered.

15) Learned counsel for the non applicant relying upon the decision of the Supreme Court in the case of Hasmat Rai (Supra) submits that language of Section 12 (1) (f) and Section 23 (A) (b) of the Act are identical. He further argued that in paragraph 10 of the said judgment, it has been categorically held that where the landlord seeks a decree of eviction of the tenant he must establish (1) that he requires bona fide possession of a building let out for non residential purpose for continuing or starting his business and (2) that he has no other reasonably suitable non residential accommodation of his own in his occupation in the city or town concerned. The burden to establish both the requirements of Section 12 (1) (f) is squarely on the landlord and before an allegation of fact to obtain the relief required is to be proved, the law of pleadings require that such facts have to be alleged and must be put in issue and it is well established proposition that any amount of proof offered without pleadings is generally of no relevance.

16) Learned counsel for the non applicants submits that from the perusal of the application it is clear that the applicant has no where pleaded that he has no other alternative residential accommodation in the Dongargarh town for the purpose mentioned above. It is also argued that the non applicant in his reply to the application for eviction has categorically mentioned

that the applicant is possessed of reasonable well furnished spacious alternative accommodation and the front portion of which is lying vacant and which can be used by the landlord but the landlord even after reply has not amended his application to incorporate the ingredients of Section 23 (A) (b) of the Act regarding non availability of the alternative suitable accommodation. Even otherwise from the evidence it is clear that the applicant possesses a house on the prominent part of Dongargarh town which is suitable for the business purpose and which is owned by the applicant.

17) On the other hand, learned counsel for the applicant submits that the alternative accommodation cited by the non applicant belongs to the daughter of the applicant namely Madhuri which is evident from the cross examination of the tenant. He further submits that the alternative accommodation is used for residential purposes whereas the suit accommodation was let out for non residential purposes and the requirement is of non residential accommodation and as the applicant is in possession of the residential accommodation, it cannot be said that the alternative accommodation is available to the applicant.

18) The only question to be considered in the present case is the effect of not pleading that the landlord has no other reasonably suitable alternative accommodation. The present proceedings are under the provisions of Chapter III, Section 23 (A) (b) of the Act and as per Section 23 (D) of the Act, the procedure to be followed by the RCA for grant of leave to contest is prescribed in which it is mentioned that in respect of

the application by the landlord it shall be presumed that unless the contrary is proved the requirement by the landlord with reference to Clause (a) or Clause (b), as the case may be Section 23 (A) is bona fide. Thus, the law laid down in Hasmat Rai's case (Supra) has to be applied in the present case in the light of Section 23 (D) (3) of the Act where the burden of proof is upon the non applicant and the presumption of bona fide is attached to the application of landlord under Section 23 (A) of the Act.

19) In the present case, the landlord has not pleaded that he does not have any alternative accommodation. However in view of Section 23 (D) (3) of the Act it was for the non applicant to prove by leading evidence that the applicant had reasonably suitable alternative accommodation in Dongargarh town which could serve the purpose of the applicant. However, the statement of the applicant that house in which he is residing at present belongs to his daughter Madhuri has not been rebutted by the non applicant by leading positive evidence in support of his contention that the applicant has reasonably suitable alternative accommodation in his possession. Even otherwise, once it is objectively held that the landlord needs the accommodation in question bonafidely for his non residential purpose, the choice of the accommodation of the landlord cannot be interfered with as to which accommodation is suitable to him as has been held by the Apex Court in Dhannalal's case (Supra). The third ground of the applicant that the tenant/non applicant had been making continuous willful default is evident from the perusal of the order sheets

of the Rent Controlling Authority. The house in question is in dilapidated condition is also evident from the applications submitted by the applicant.

20) Taking into consideration the fact that the applicant is a retired Government servant and that he is almost blind and as such he falls in the category under Section 23 (J) of the Act, the application for eviction of the applicant against the non-applicant is very much tenable and the learned Rent Controlling Authority has rejected the same on the grounds which are not justified.

21) In view of the discussion in the foregoing paragraphs, the revision petition is allowed, the impugned order is set aside and it is ordered that non applicant shall handover the vacant possession of the suit accommodation to the applicant within a period of six months from the date of receipt of copy of this order.

Sd/-
Dhirendra Mishra
Judge

Jyo